

**IN THE U.S. DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,  
*Plaintiff,*  
v.  
MASIMO CORPORATION and  
SOUND UNITED, LLC,  
*Defendants.*

Civil Action No. 22-1377 (MN) (JLH)

APPLE INC.,  
*Plaintiff,*  
v.  
MASIMO CORPORATION and  
SOUND UNITED, LLC,  
*Defendants.*

Civil Action No. 22-1378 (MN) (JLH)

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S RENEWED MOTION TO DISMISS**

*Of Counsel:*

Joseph R. Re  
Stephen C. Jensen  
Benjamin A. Katzenellenbogen  
Stephen W. Larson  
Jared C. Bunker  
Matthew Pham  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
(949) 760-0404 Telephone  
(949) 760-9502 Fax  
joe.re@knobbe.com  
steve.jensen@knobbe.com  
stephen.larson@knobbe.com  
ben.katzenellenbogen@knobbe.com  
jared.bunker@knobbe.com Brian Horne  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
1925 Century Park East, Suite 600  
Los Angeles, CA 90067  
(310) 551-3450 Telephone

John C. Phillips, Jr. (No. 110)  
Megan C. Haney (No. 5016)  
PHILLIPS, McLAUGHLIN & HALL, P.A.  
1200 North Broom Street  
Wilmington, DE 19806  
(302) 655-4200 Telephone  
(302) 655-4210 Fax  
jcp@pmhdelaw.com  
mch@pmhdelaw.com

*Counsel for Defendants*  
*Masimo Corporation and Sound United, LLC*

Dated: July 13, 2023

(310) 551-3458 Fax  
brian.horne@knobbe.com

Adam Powell  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
3579 Valley Centre Drive, Suite 300  
San Diego, CA 92130  
(858) 707-4000 Telephone  
(858) 707-4001 Facsimile  
adam.powell@knobbe.com

On July 7, Apple filed a Renewed Motion to Dismiss and Strike on two grounds. D.I. 153.<sup>1</sup>

Apple asks the Court to reissue its Report and Recommendation (R&R) so that Apple can object to that R&R. *Id.* Masimo agrees that the Court should reissue its R&R because the new allegations in Masimo's amended pleading do not change the parties' arguments or the basis for the Court's R&R. Masimo incorporates its arguments made in its opposition and at the hearing. *See* D.I. 68 at 8-12, 17-19; D.I. 83 (-1377) at 3-18; 6/15/2023 Tr. at 22-40, 50-54.<sup>2</sup>

Separately, Apple has argued the Court's R&R held "Masimo's 'predatory infringement' and 'monopoly leveraging' theories of liability are 'invalid' as a matter of law, and that the case should not proceed on those theories." D.I. 140 at 2. Based on that argument, Apple has now taken the position that it need not provide discovery on those theories. Exhibit A at 1; Exhibit B at 1; Exhibit C at 1. Apple's position is untenable because the deadline for substantial completion of document discovery is August 10 and the close of fact discovery is September 21. D.I. 92 at 15-16. Apple may dispute the relevance and proportionality of particular requests, but it has no basis for refusing to provide discovery on issues it intends to raise with Judge Noreika. Thus, Masimo respectfully requests that the Court make clear that the R&R did not limit discovery, and that Apple's objections to the R&R provide no basis to delay discovery on any issue.

Respectfully submitted,

July 13, 2023

PHILLIPS McLAUGHLIN & HALL, P.A.

By: /s/ John C. Phillips, Jr.

*Of Counsel:*

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<sup>1</sup> Unless stated otherwise, all citations are to 22-cv-01378.

<sup>2</sup> Apple indicates it will object to the R&R by making new arguments and citing new cases. *See* D.I. 153 at 3 (citing D.I. 140 filed after the R&R). If Apple does so, Masimo will object and/or address the arguments on the merits in its opposition to Apple's objection.

Joseph R. Re  
Stephen C. Jensen  
Benjamin A. Katzenellenbogen  
Stephen W. Larson  
Matthew Pham  
Jared C. Bunker  
Knobbe, Martens, Olson & Bear, LLP  
2040 Main Street, 14th Floor  
Irvine, CA 92614  
(494) 760-0404 Telephone  
(494) 760-9502 Facsimile  
[joe.re@knobbe.com](mailto:joe.re@knobbe.com)  
[steve.jensen@knobbe.com](mailto:steve.jensen@knobbe.com)  
[stephen.larson@knobbe.com](mailto:stephen.larson@knobbe.com)  
[ben.katzenellenbogen@knobbe.com](mailto:ben.katzenellenbogen@knobbe.com)  
[jared.bunker@knobbe.com](mailto:jared.bunker@knobbe.com)Brian Horne  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
1925 Century Park East, Suite 600  
Los Angeles, CA 90067  
(310) 551-3450 Telephone  
(310) 551-3458 Facsimile  
[brian.horne@knobbe.com](mailto:brian.horne@knobbe.com)  
  
Adam Powell  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
3579 Valley Centre Drive, Suite 300  
San Diego, CA 92130  
(858) 707-4000 Telephone  
(858) 707-4001 Facsimile  
[adam.powell@knobbe.com](mailto:adam.powell@knobbe.com)

John C. Phillips, Jr. (No. 110)  
Megan C. Haney (No. 5016)  
1200 North Broom Street  
Wilmington, DE 19806  
(302) 655-4200 Telephone  
(302) 655-4210 Fax  
[jcp@pmhdelaw.com](mailto:jcp@pmhdelaw.com)  
[mch@pmhdelaw.com](mailto:mch@pmhdelaw.com)

*Counsel for Defendants*  
*Masimo Corporation and Sound United, LLC*

## CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2023, a true and correct copy of the foregoing document was served on the following counsel of record at the addresses and in the manner indicated:

**VIA ELECTRONIC MAIL:**

David E. Moore Bindu A. Palapura Hercules Plaza, 6th Floor 1313 N. Market Street Wilmington, DE 19801 <a href="mailto:dmoore@potteranderson.com">dmoore@potteranderson.com</a> <a href="mailto:bpalapura@potteranderson.com">bpalapura@potteranderson.com</a>	John M. Desmarais Kerri-Ann Limbeek Cosmin Maier Jordan N. Malz Benjamin N. Luehrs Joze Welsh Jamie L. Kringstein DESMARAIS LLP 230 Park Avenue New York, NY 10169 <a href="mailto:jdesmarais@desmaraisllp.com">jdesmarais@desmaraisllp.com</a> <a href="mailto:klimbeek@desmaraisllp.com">klimbeek@desmaraisllp.com</a> <a href="mailto:cmaier@desmaraisllp.com">cmaier@desmaraisllp.com</a> <a href="mailto:jmalz@desmaraisllp.com">jmalz@desmaraisllp.com</a> <a href="mailto:bluehrs@desmaraisllp.com">bluehrs@desmaraisllp.com</a> <a href="mailto:jwelsh@desmaraisllp.com">jwelsh@desmaraisllp.com</a> <a href="mailto:jkringstein@desmaraisllp.com">jkringstein@desmaraisllp.com</a>
Peter C. Magic DESMARAIS LLP 101 California Street San Francisco, CA 94111 <a href="mailto:pmagic@desmaraisllp.com">pmagic@desmaraisllp.com</a>	Jennifer Milici Dominic Vote Leon B. Greenfield Wilmer Cutler Pickering Hale and Dorr LLP 1875 Pennsylvania Avenue, NW Washington DC 20006 <a href="mailto:jennifer.milici@wilmerhale.com">jennifer.milici@wilmerhale.com</a> <a href="mailto:dominic.vote@wilmerhale.com">dominic.vote@wilmerhale.com</a> <a href="mailto:leon.greenfield@wilmerhale.com">leon.greenfield@wilmerhale.com</a>
Mark A. Ford Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street Boston, MA 02109 <a href="mailto:mark.ford@wilmerhale.com">mark.ford@wilmerhale.com</a>	

July 13, 2023

/s/ Megan C. Haney  
 Megan C. Haney